

New E-Evidence Legislation: Trilogue Started – Criticism on EP Stance

Thomas Wahl

News

After the European Parliament adopted its position on the e-evidence package in December 2020 (→ [eucriM 4/2020, 295-296](#)), trilogue negotiations between the EP, the Council, and the Commission started on 10 February 2021. The Council had already presented its general approach in 2018 (→ [eucriM 4/2018, 206](#)). For the original Commission proposal → [eucriM 1/2018, 35-36](#). The new legislation aims to simplify the ability of law enforcement authorities to access data held by private digital service providers in another national jurisdiction. The proposal is highly contentious; the EP included several amendments in its position. In particular, the lack of judicial control in the executing state as well as unresolved questions regarding notification obligations were criticised. For the discussion and criticism put forward by NGOs, navigate to previous eucriM issues under “Law Enforcement Cooperation.”

The Council [expects difficult negotiations](#). In [preparatory documents from 25 January 2021](#), the Council Presidency juxtaposes the initial Commission proposal and the respective positions of the EP and the Council, both as regards the [proposed Regulation](#) on European Production and Preservation Orders for electronic evidence in criminal matters and the [Directive](#) laying down harmonised rules on the appointment of legal representatives for the purposes of e-evidence gathering. Regarding the latter instrument, it should be noted that the EP wishes to merge the provisions of the Directive into the Regulation.

In mid-January 2021, the [European Judicial Network e-Evidence Working Group \(WG\)](#) criticised the EP’s position. After having assessed the proposed amendments made by the EP, the WG believes that the drafted provisions are inconsistent, confusing, and unclear. The WG also commented on eight points that may affect judicial cooperation regarding the obtainment of e-evidence if the Regulation were adopted in its current form. In conclusion, the EJM WG believes that the EP’s version is no advancement compared to other existing judicial cooperation instruments.

On the opposite side of the fence, the civil stakeholder organisation [EDRI](#) [blamed the EP](#) for having made too far-reaching compromises that water down adequate safeguards previously included in the original drafts of the EP rapporteur. In particular, the compromise will put the rights of journalists, lawyers, doctors, social workers, and individuals in general at risk.

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